

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1995.)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

MD Docket No. 95-3

JOINT COMMENTS OF ALLTEL MOBILE COMMUNICATIONS and
ALLTEL SERVICES CORPORATION

I. Introduction

Alltel Mobile Communications and Alltel Services Corporation¹ (jointly "Alltel") hereby submit their comments in the above-captioned rule making matter² respecting the Commission's assessment and collection of the regulatory fees for FY 1995 required pursuant to Section 9 of the Communications Act of 1934, as amended. 47 USC Sec. 159 (1993). In support thereof, the following is respectfully set forth.

1. Alltel readily acknowledges the benefits of the added resources available to the Commission as a result of the 1993 Omnibus Budget Reconciliation Act's³ mandate requiring the Commission to recoup a portion of its appropriation through the

¹ Alltel Services Corporation through its subsidiaries and affiliates provides local exchange service. Alltel Mobile Communications is a leading provider of cellular services. Consequently, both companies will be impacted by the proposed increases in the Commission's regulatory fee schedule for each of these services.

² See In the Matter of Assessment and Collection of Regulatory Fees for Fiscal year 1995, MD Docket No 95-3, FCC 95-14 (Released January 12, 1995) ("NPRM")

³ See Public Law 103-317, 108 Stat. 1724 at 1737-38 (Approved August 26, 1994)

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imposition of regulatory fees for certain services. Alltel also readily acknowledges that, in an era of large Federal deficits, it is incumbent on those falling within the Commission's jurisdiction to contribute to the costs incurred by the Commission in providing better service to the public and meeting the legislative mandates of the Communications Act.

2. Yet, while it was the Congress that ultimately required the Commission to collect fees (and licensees to pay them), Alltel asserts that the Commission's proposed regulatory fees must be more fairly allocated among the various services within each bureau's jurisdiction to better reflect the benefits derived from the Commission's regulation and not the perceived financial resources of the affected licensees. As the Commission notes, the amount of its appropriation for FY 1995 that is to be recovered through regulatory fees is \$116,400,000, an increase of 93% over the \$60,400,000 the Commission was required to recoup in fees for FY 1994. See NPRM at para. 3. Yet, despite the overall 93% increase in funds to be recouped, certain classes of licensees may be subject to more than a 200% increase in regulatory fees under the Commission's proposal while other classes of new services are excluded altogether. If fees must be charged, Alltel asserts that it is incumbent upon the Commission to ensure that licensees are protected from the impact of disparate fee assessments.

II. Cellular/Public Mobile Radio.

A. The Commission Must Set a Date for Calculating Regulatory Fees Which Would Recapture Rule Making Expenses From New Or Reclassified Services.

3. The Commission notes at fn. 9 of the NPRM that it has not

proposed regulatory fees for the Personal Communications Services (PCS), Commercial Mobile Radio Service (CMRS) and other services because no facilities were authorized on the Commission's proposed date for calculating fees, October 1, 1994. The Commission further notes that these services are so new that "negligible amounts of FTEs are assigned to these services other than for application processing." NPRM at fn.9 Yet rulemaking, not application processing, is the core justification for the imposition of regulatory fees under Section 9 of the Act. The Commission must develop an equitable method to recover the rule making expense associated with new services.

4. Setting the date for fee calculation at the beginning of the fiscal year has two effects which work to the disadvantage of licensees in existing services: it permits classes of services which consumed considerable resources during rule making (and in the case of PCS, auctions) to escape any payment in the fiscal year in which they may receive their authorizations; and it requires the Commission to recoup its entire appropriation based upon the status of regulation at the start of the fiscal year.⁴ Inasmuch as the amount of the appropriation to be recovered is fixed, licensees in existing services are therefore obligated under the Commission's proposed schedule of fees to bear the disproportionate brunt of the costs associated with Commission rule making proceedings for new

⁴ In this connection, Section 9 requires the Commission to recoup through fees funds appropriated for, among other things, policy and rule making activities. See 47 USC Sec.159(a). The Act is silent as to any connection between the award of an authorization and a party's potential liability for a regulatory fee.

services which may be authorized at a later point during the year.

5. The single fixed date approach also minimizes use of the Commission's broad discretion under Sections 9(b)(2) and 9(b)(3) to amend and update the statutory fee schedule. Rather than calculate fees as of the first day of the fiscal year and recoup the entire amount of the appropriation as of that date⁵, the Commission should estimate the amount of fees which may be obtained from new and reclassified services throughout the fiscal year. The Commission could then choose the date for calculation of fees which would best capture fees from those services which would have otherwise escaped fee payments until the following fiscal year. Additionally, either simultaneously with the mandatory 9(b)(2) rule making or subsequently through the course of the fiscal year, the Commission could conduct Section 9(b)(3) rule makings to assess and collect fees for new services in order to both recoup the appropriation and amend the statutory fee schedule. Were the Commission to adopt this approach, cellular licensees would not be required to bear the financial burden of the PCS rule makings or the now artificial differences for fee purposes among CMRS licensees.⁶

⁵ Alltel acknowledges that Section 9 can be interpreted to require the Commission to recoup the entire amount of the regulatory appropriation through the mandatory rule making required under Section 9(b)(2).

⁶ While the Commission has decided not to use the new CMRS classification to minimize the adverse impacts to the fee schedule, it did not suffer from this concern last year when amending the schedule to provide for the creation of the new Cable Services Bureau. See 9 FCC Rcd 5333, 5334 (1994) at fn.4. Alltel notes that SMR licensees are required to pay fees on the basis of call signs and not subscribers, an approach which permits SMRs, as opposed to other CRMS carriers, to pay lower fees.

B. The Commission Must Fairly Allocate FTEs Among the Various Services Within Each Bureau.

6. Section 9 of the Act requires only that the Commission allocate FTEs to each of the bureaus for the purpose of setting the ratio upon which fee increases will be allocated. The Act is generally silent as the manner in which the Commission allocates the fee increases within each the of services under a bureau's jurisdiction, although Section 9(b)(1)(A) provides the Commission with the discretion to adjust individual fees. The NPRM, however, does not propose any such adjustments. The Commission notes only that, based upon the number of FTEs, fees from the Common Carrier Bureau should equal \$57 million dollars, a 218% increase over the allocation from FY94. Rather than further adjust the amounts due from the various common carrier services to reflect the amounts of FTEs used, the Commission apparently applies the 218% increase across the board to each common carrier service. See NPRM at Appendix G. The Commission must adopt a method to better allocate FTEs among the various classes of service so that FTEs and the resulting fees more closely approximate the level of regulation of a particular service.⁷

C. The Commission Is Without Authority Under Section 9(b)(2) to Amend the Fee Units In the Statutory Schedule of Fees.

7. While the Commission has the authority to increase the amount of the fees pursuant to the mandatory fee provisions in Section 9(b)(2) of the Act, the fee units, which are contained in the

⁷ Alltel notes that the accounting system required under Section 9(i) would enable the Commission to make individual fee adjustments.

statutory fee schedule, may be amended only as permitted changes under Section 9(b)(3). The Commission appears to acknowledge as much as it notes in the case of cellular licensees at para. 43 of the NPRM that "For FY 1994, we required a fee payment on a subscriber basis pursuant to the statutory requirement to charge a per subscriber fee." See NPRM at para.43.

8. The Commission also notes that it relies on the discretionary authority under Section 9(b)(3) to modify the fee unit. In this connection, the Commission states: "Therefore, for FY 1995, we propose to exercise our authority to make permitted amendments to the fee schedule to propose that each licensee in the Public Mobile/Cellular Radio Services pay an annual regulatory fee for each mobile or cellular unit (mobile or cellular call sign or telephone number) including paging units, assigned to its customers, including resellers of its services." NPRM at para. 44.

9. Use of Section 9(b)(3) authority is not without its requirements. One is the need to submit to Congress the proposed fee schedule 90 days prior to its effective date. Another is the requirement in Section 9(i) that the Commission institute an accounting process to allocate and adjust fees assessed under Section 9(b)(3).⁸ In the absence of the accounting system mandated by Section 9(i), the Commission is without the required authority

⁸ The Commission has previously acknowledged the need to establish the accounting systems as a necessary prerequisite to making adjustments in the Schedule of Regulatory Fees in what was to be a separate rulemaking proceeding subsequent to the Report and Order setting FY 1994 regulatory fees. See, In the Matter of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 9 FCC Rcd. 5333 (1994) at fn.2.

to currently alter the payment units from those specified in the statutory fee schedule.

10. Even were the Commission currently vested with the authority to change the fee units, there are sound public policy reasons why the Commission should maintain the status quo. Under the Commission's current proposal, licensees must pay the entire regulatory fee, even where a substantial number of units are under the control of a single authorized subscriber. The net effect is to require a fee based upon a unit which may in fact not be in service, and which may not be generating any revenue, either to the reseller or the system licensee. The Commission should therefore retain its existing definition of subscriber and assess fees on that basis.

III. Local Exchange Carriers

11. The Commission seeks comment on alternative methods for calculating regulatory fees for the non-mobile carrier category. The NPRM proposes that fees levied on access services provided by local exchange carriers (LECs) be based on the number of presubscribed lines as of December 21, 1994, as described in Section 69.116 of the Commission's rules. NPRM at para 59. Alternatively, the Commission proposes to base fees on the number of minutes of interstate service provided in calendar year 1994. The number of interstate minutes would be equal to the number of origination and terminating access minutes for LECs. NPRM at para 60.

12. Alltel believes the first alternative is to be preferred. The statutory fee schedule indicates that LECs are to be charged fees based upon a multiple of access lines. Basing fees on the

number of presubscribed lines would therefore be consistent with the units specified in the fee schedule.⁹ Additionally, Alltel believes that it is far more administratively efficient from an accounting point of view for a LEC to calculate fees based upon lines as opposed to access minutes.

Respectfully submitted,

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⁹ Alltel notes that in the absence of the accounting system required under Section 9(i) of the Act, the Commission may be without authority to amend the fee units. See paras 7-9 infra.